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International Economic Law, and Institutions in Developing Countries

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The Washington Consensus policies (i.e., policies that focus primarily on privatization and liberalization) have failed to work as promised. In the developing countries that followed the Washington Consensus policies, economic growth was limited at best. Many scholars agree that this is because developing countries failed to establish “right institutions” (i.e., institutions that reflect the local market conditions and culture), which are crucial for the Washington Consensus policies to perform well.

The Washington Consensus and the WTO were working together because they both call for openness to trade, so there was never a conflict between the two. However, the WTO has never come to grips with the fact that its openness agenda is no longer accepted as a sufficient or even a necessary part of development policy. The WTO has not shown sufficient efforts to help developing countries implement right institutions, even though the WTO faces domestic institutions through various channels such as the dispute settlement system. The goal is not to use free trade as a means for growth but to use growth as a means to achieve free trade. That is, once a country has developed, we can expect it to accept the free trade regime, but we should not necessarily expect it to grow through free trade.

This article argues that the WTO must shift from a “market access” mind-set to a “development” mind-set, enable developing countries to experiment with institutional arrangements, and leave room for them to devise their own right institutions. The

article introduces three methods by which to achieve this shift: (1) modification of the accession process, (2) modification of safeguards, and (3) cooperation with the International Monetary Fund.

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1. Introduction

The point of departure for this article is the Washington Consensus – a set of policies to do with effective development strategies that have come to be involved with Washington-based institutions: the International Monetary Fund (IMF), the World Bank, and the US Treasury.¹ The Washington Consensus is based on three underlying principles: a market economy, openness to the world market, and macroeconomic discipline.² Generally, the Washington Consensus is toward “market fundamentalism,” the view that one looks to the market as the best solution to most of the economic problems.³ However, for the countries that followed the Washington Consensus policies, economic growth was not higher than expected, and the policies aggravated income polarization.⁴ In Latin America, for example, growth under the Washington Consensus was half of what it had been from the fifties through the seventies, when the region followed non-Washington Consensus policies, such as import substitution.⁵ Even in countries where the Washington Consensus policies did appear to promote economic growth, such growth failed to reduce income inequality and poverty.⁶

On the other hand, East Asian countries pursued a different set of policies and achieved economic growth.⁷ For example, governments played a crucial role in certain areas. Government enterprises (e.g., Korea’s national steel company) became leaders in a global market.⁸ Government slowed down trade liberalization, and some countries, such as China, are still not fully liberalized capitalist trade markets. Thus, evidence in East Asian countries proved that non-Washington Consensus policies could lead to further economic growth.⁹

The differences in performance between Latin American and East Asian countries led many scholars to study the next steps for further economic growth in developing countries. Dani Rodrik suggested that growth policies in developing countries must be context-specific.¹⁰ In other words, policy makers in developing countries must consider the “environmental setting,” including culture, religion, or politics of their countries, in order for policies to be effective.¹¹ Without careful consideration of the “environmental setting” or “right institutions” (i.e., institutions that reflect the local condition and culture), directly importing the Washington Consensus policies from developed countries would have a negative effect on developing countries.¹² In sum, there is no quick or standard “menu” of reform for high growth, and implementing right institutions is the critical element for growth in developing countries.¹³

Based upon these findings, Rodrik argued that the world trading regime has to shift from a “market access” mind-set to a “development” mind-set.¹⁴ Essentially, the

shift means that we stop evaluating the trade regime from the perspective of whether it maximizes the flow of trade in goods and services and ask instead whether the trading arrangement maximizes the possibilities of development at the national level.¹⁵ For example, South Korea's outward orientation during the 1960s was achieved not by import liberalization (of which there was little), but by export subsidization (of which there was a lot). This type of reform is now prohibited under existing WTO rules on subsidies. Similarly, China's two-track reform strategy in agriculture, industry, and trade – which maintained nonmarket institutional forms while aligning incentives correctly at the margin – has been wildly successful.¹⁶ These are cases where imaginative experimentation with institutional reform has had, in all likelihood, greater payoffs than the wholesale transplantation of institutions from advanced industrial countries.¹⁷

In sum, establishing right institutions is critical for further economic growth in developing countries, and the world trade regime must shift toward a “development-friendly regime.”

The primary goal of this article is to seek how the WTO can achieve this goal: shifting from a market access mind-set to a development-friendly mind-set. The dissertation determines the ways in which the WTO can promote its free trade goals by being sensitive to the development needs of its members. Before discussing the WTO, the article reviews how other Washington-based institutions such as the IMF or the World Bank have managed the right institution issue. The IMF and the World Bank initiated “ownership programs” to allow developing countries or loan-recipient countries to draft their policy conditionality, because those countries presumably know best their local environment and culture and how best to implement their own right institutions. However, the result of these “ownership programs” was unsatisfactory. The IMF and the World Bank have been criticized for their continuous and unnecessary interventions into the conditionality drafting process. Based upon these failures of the IMF and the World Bank, this article introduces three methods for the WTO to help developing countries establish right institutions: (1) modification of the accession process, (2) modification of safeguards, and (3) cooperation with the IMF.

The first method is to modify the accession process. Implementing right institutions requires setting priorities among institutional reforms based on accurate diagnoses of economic features. The working party must take advantage of resources from the IMF and the World Bank to analyze the institutional capacity of the acceding country, since the acceding country does not tend to fully disclose its domestic

institution capacities and policies. Moreover, the working parties must prioritize their commitment based on the institutional capacity of the acceding country.

Second, the WTO can modify the safeguard measures. The WTO can permit developing countries to apply extended safeguards, so-called developmental and social safeguards, to allow countries to implement right institutions for their labour markets in order to reduce the side effects of imports, such as income inequality. The extended safeguards must only be permitted when a developing country utilizes general TAA (Trade Adjustment Assistance), which fundamentally renovates labour market institutions.

Lastly, the WTO can reactivate cooperation with the IMF in terms of data exchange and research cooperation. For example, the IMF can take advantage of trade policy reviews (TPRs) for drafting conditionality for emergency loans, since a TPR has more comprehensive and up-to-date trade-related information compared with other resources such as the Article IV consultations produced by the IMF. The IMF can utilize the TPRs to figure out policy priorities of developing countries and the right timing for exercising trade reforms. The following section uses the example of the Asian crisis to address the IMF's failure to understand the right timing of trade reform and importance of policy priority and further argues that TPRs provide such information.

The sections proceed as follows: Section II traces how the IMF and the World Bank have dealt with the institution issue in developing countries. Sections III through V investigate how the WTO can assist developing countries to build right institutions. Section III is about modifying the accession process. Section IV analyzes modifying the safeguard measures. Section V explains the proposed cooperation between the WTO and the IMF. Lastly, Section VI concludes the article.

2. Washington-based Institutions

A. The IMF

The content of the IMF's conditionality has been heavily criticized. Some have argued that the IMF has become too ideological and that its conditionality pertaining to trade reform in low-income countries is not based on sound analysis.¹⁸ Others have questioned the legitimacy of the policies that the authorities have agreed with the IMF, pointing out that key sectors of society were not properly consulted or were excluded from program negotiations.¹⁹ One primary criticism is that the conditionality is excessive and unnecessarily detailed without taking into consideration the local environment, and thus, conditionality is intrusive and undermines national ownership

of policies.²⁰ In other words, the IMF has failed to recognize the importance of right institutions and has mistakenly imposed a Washington Consensus–like conditionality.

To respond these criticisms, the IMF approved new conditionality guidelines in its “streamlining” initiative in 2002 to reduce the number of conditions and to include only structural conditions that were deemed critical to success.²¹ The main purpose of these new guidelines was to encourage stronger ownership in order to make the IMF program more effective and to ensure that loan conditions are more tailored to recipient countries’ different economic situations and local cultures.²² Consequently, the IMF allowed loan-recipient countries to have primary responsibility for selecting, designing, and implementing policies that will make the conditionality program successful. For example, the recipient country’s finance minister drafts a letter of intent (LOI) and the managing director of IMF establishes the conditionality.²³ The IMF expected that enhancing ownership by means of the letter of intent would solve the problem of “right institutions,” because a recipient country would have sufficient information about the local environment, which presumably would be embedded in the letter of intent.²⁴

However, contrary to the IMF’s expectation, the new guidelines for conditionality have failed. Although the recipient country drafts the letter of intent, in most cases the IMF determines the specificity of the conditions and recipient countries do not have significant space to negotiate to reshape the conditionality.²⁵ Certain national authorities continue to complain about IMF inflexibility and still perceive the IMF as an agent for imposing a Washington Consensus–like policy.²⁶

B. The World Bank

The World Bank seems to follow the same path as the IMF. The World Bank underwent a dramatic conditionality reform, from an emphasis on actions for macroeconomic growth, to more recent attention to the different design aspects of structural adjustment conditionality, including enhancing the ownership of programs and reducing the number of conditions.²⁷ For example, the conditionality regarding privatization or trade liberalization has significantly declined and focuses more on long-term institutional issues, and the average number of conditions per operation fell from 35 in the late 1980s to 12 in 2005.²⁸

Just as the IMF, the World Bank allows recipient governments to draft Poverty Reduction Strategy Papers (PRSPs) because the increase in the local government’s participation in creating the policy leads to greater ownership of the structural adjustment programs.²⁹ Despite efforts to reform conditionality, poverty in recipient countries has not been reduced.³⁰ Some studies have shown that World Bank involvement has even had a negative impact on economic growth across countries.³¹

Critics argue that the dysfunction of conditionality is due to a lack of ownership because the World Bank still intervenes heavily in the process of drafting and implementing conditionality.³² Some argue that, even if conditionality is well drafted, the conditionality increases political instability in the recipient country because the implementation itself leads to government crises, cabinet changes, and replacements of entire governments, which all lead to poor performance in meeting the conditionality.³³

C. The WTO

The efforts of the IMF and the World Bank seem to be unsatisfactory. Now this article explores the efforts of the WTO with regard to right institutions.

In general, the GATT recognized the need for infant industry protection, flexibility in the use of balance of payment measures, nonreciprocity in trading tariff concessions, and preferential market access for the manufactured exports of developing countries. These provisions were based on the premise that equal treatment among those who are unequal is unfair. Just as poor people pay lower taxes, developing countries should pay less when they are poor and more as they develop. Finally, the GATT established special and differential treatment for legal flexibility for developing countries. Now there are 155 provisions from the WTO addressing the various concerns of developing countries.³⁴ Some emphasize the increase of developing countries' trade opportunities, whereas others aim at safeguarding their interests.³⁵ Others provide for flexibility in the implementation of commitments and permit the use of technical assistance.³⁶ These provisions may be mandatory or nonmandatory.

However, the crucial question is whether these provisions fit well into the development strategies of developing countries. Large numbers of provisions are considered useless by developing countries, and in particular these provisions do not seem to address the issue of right institutions in developing countries. As described above, the fundamental problem of developing countries is whether they are equipped with right institutions. In this regard, the WTO must shift its perspective to a more development-friendly regime and help countries to establish right institutions for further economic growth. In that way, income polarization and high levels of poverty would naturally be resolved, which are the underlying goals of the WTO. Therefore, the WTO should be conceived of not as an institution devoted to harmonization and the reduction of national institutional difference, but as an institution that manages the interface between different national systems.³⁷

This article introduces three methods for the WTO to design right institutions in developing countries: (1) modification of the accession process, (2) modification of the safeguard measures, and (3) cooperation with the IMF.

3. Modification of the Accession Process

A. Introduction

WTO accession is a significant change for the acceding country. The accession process requires a number of commitments to do with redesign of their domestic economic institutions. Moreover, the accession itself sends a signal to foreign investors to boost their confidence in investing the acceding country.³⁸ First, this section addresses how accession works, and problems associated with accession.

Article XII and other provisions of the WTO address the process of WTO accession, but Article XII does not give any guidance on the “terms to be agreed” for the accession or procedures for accession negotiation. Thus, terms and procedures are decided by the working parties during the negotiation. An individual country drafts an application for accession for negotiation.

First, an acceding country drafts an accession application for negotiations to begin. After this initial process, a working party is established to start three tracks of accession negotiations:³⁹ (1) a systemic or multilateral track; (2) a market access in goods track; and (3) a market access in service track. During the process, the working party members submit questions to acceding countries in various areas, including balance of payment, foreign exchange operations, customs system, export regulations, import licensing, taxation system, safeguard measures, and system for the protection of IP rights, etc.⁴⁰ This stage is primarily a transparency stage which helps the acceding government to understand their own policies and gives an opportunity for the working party to understand the trade-related policies and institutions of the acceding country.⁴¹

Second, negotiation begins with the acceding country making an initial offer on market access.⁴² The working party members then enter into bilateral negotiations with the acceding country over the “concessions” that the acceding country will make on a most-favoured-nation (MFN) basis.⁴³ In particular, the Legislative Action Plan (LAP) provides a detailed commitment of institutional change.⁴⁴ The LAP includes deadlines for legislative changes, intended policy changes, and institutional reforms.⁴⁵ Table 1 shows in detail how the WTO accession process impacts domestic institutions.⁴⁶

Table 1 Impacts of WTO Accession Process on Economic Policies and Institutions

			Commitments in specific policy areas
Policies affecting trade in goods and services	Trade in goods	Import regulation	Import regimes, custom code, ordinary customs duty, other duties and charges, TRQ, tariff exemptions, application of internal taxes on imports, prohibitions, quota, restrictive licenses, import licensing procedures, customs valuation, rules of origin, other customs formalities, pre-shipment inspection, contingency measures (e.g. antidumping, countervailing and/or safeguard measures)
		Export regulation	Tariffs or taxes on exports, export restrictions, export subsidies, export processing zones
		Internal policies affecting trade in goods	Taxes and charges levied on imports, industrial policies including subsidies, technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS), trade-linked investment measures (TRIMS), state trade entities, free zones and special economic areas, government procurement, transit, agricultural policies, trade in civil aircraft, textiles Trade rights, (advertising and trade in alcohol and tobacco)
	Trade in services		Horizontal commitments (in modes 1, 2, 3, 4), MFN exemptions, full or partial commitments in the following services: business, communication, construction, distribution, educational, environmental, financial, health, tourism, and travel-related, transport
	Trade-related intellectual property rights (TRIPS)		Obligations stipulated in the TRIPS Agreement
Other related policies			Non-discrimination, foreign exchange and payments, balance-of-payment measures, investment regime, state ownership and privatization, pricing policies
Policies affecting institutions			Structure and powers of government: powers of government; powers, executive, legislative and judiciary administration of policies on WTO-related issues; authority of sub-central governments; uniform administration of trade regime; judicial review (including the right of appeal)

Source: Technical Note on the Accession Process, WT/ACC/10/Rev.3, 2005 and
http://www.wto.org/english/thewto_e/acc_e/acc_e.htm

Lastly, all concluded bilateral agreements are “multilateralized” and sent to all the working party members.⁴⁷ The report includes a draft decision and protocol of accession regarding the agreed commitments on WTO rules and concessions on goods etc.⁴⁸ After the working party accepts the report, the report is sent to the Ministerial Council for final acceptance.⁴⁹

The following section of this article reviews literature related to the accession process.

B. Literature Review

The major criticism of the accession process is that it is long and demanding, especially for least developed countries. The transparency stage – the fact-finding stage of information seeking by the working party – is too long, often repetitive, and uncoordinated.⁵⁰ Moreover, many acceding countries lack the institutional capacity to address the demanding requirements proposed by the working party.⁵¹ Many acceding countries do not have, for example, efficient and transparent legislation processes that can be made to comply with the WTO obligation in time.⁵²

In light of these criticisms, some have argued that the working party must allow a time extension to meet obligations. Others even propose that the WTO must allow newly acceding countries the benefit of special and differential (S&D) treatment, which has been available only to developing countries, for time extension.⁵³

In addition to the literature focused on the notion of the long and demanding process, others have focused on the institutional aspects of accession. The United Nations Conference on Trade and Development (UNCTAD) published “WTO Accessions and Development Policies” in 2001, a document which explains various aspects of WTO accession and country-specific experiences. It argued that the set of commitments made by an acceding country in connection with WTO accession must not be regarded as a concession. Rather, it must be viewed as an investment.⁵⁴ Particularly, Drabek and Bacchetta argued for the positive impact of WTO accession on institutional reform. They found that WTO accession opens up significant improvement in economic governance and institutions.⁵⁵ Likewise, Kennett et al. studied the relationship between accession and institutional change in Ecuador, Jordan, and Bulgaria.⁵⁶ Tang and Wei explored the consequences of accession for income and investment.⁵⁷ They concluded that accession led to increased income and investment only if countries had gone through a rigorous accession process.⁵⁸ They also found that policy commitments in the course of accession were helpful, especially for countries with poor governance.⁵⁹ Basu conducted a comprehensive empirical study by looking at the effects of accession on domestic economic policies and institutions in comparison to other developing members.⁶⁰ He concluded that

accession had a significantly positive effect for acceding countries after controlling for developing countries in the sample by using difference-in-difference analysis.⁶¹ Thus, he insisted that WTO accession could be seen as a great opportunity to establish better economic institutions.⁶²

C. Two Ways of Modifying the Accession Process

The accession process is demanding for acceding countries because of their immature institutions. This article argues that if working party members were to successfully diagnose the institutional capacity of the acceding countries and modify the accession process to be more efficient by tailoring it to their economic institutional capacity, the acceding country would no longer feel the WTO obligations to be demanding and would, thus, shorten the accession process. Therefore, modifying the accession process in light of “institutional capacity” would help acceding countries to establish right institutions in their countries. The following are two methods for modifying the accession process.

1. Utilize the resources of the IMF and the World Bank to reduce the temptation for acceding countries to not accurately disclose features of their institutional and policy capacity.

First, the WTO must actively utilize the IMF’s or the World Bank’s resources to gather accurate information on the acceding country in order to reduce the acceding country’s incentive to not fully disclose its institutional capacity. Accurate diagnosis of the economic features of the acceding country would lead to efficient and transparent negotiations and, thus, help the country to establish right institutions.

The accession process includes the fact-finding stage, the transparency stage, where the working party members investigate details of the economic environment of the acceding country, including levels of institutions. This is a great opportunity for the acceding country to understand its own policies and levels of institutional maturity and find out any weaknesses. This accurate diagnosis not only helps with efficient and transparent negotiation in a later stage of the process but also helps smooth domestic reform for institutional change.

However, the acceding country tends to avoid a full disclosure of its economic features, including the institutional capacity, because of protectionism.⁶³ For example, they would not want to disclose various government subsidy programs that protect their domestic industries.⁶⁴

To avoid this, the working party members must utilize resources from other international organizations to accurately detect and analyze an acceding country’s

economic features. The IMF, for example, allows the WTO Secretariat the resources of international financial statistics, balance of payment statistics, government financial statistics, and direction of trade statistics.⁶⁵ Most especially, they provide a projection of individual country data based on a request of the WTO.⁶⁶ Moreover, they provide IMF staff reports and papers on Article IV consultations on IMF members seeking accession to the WTO, subject to the consent of the member.⁶⁷ Article IV contains detailed information of the IMF's trade policy advice and conditionality.⁶⁸ Likewise, the World Bank provides the WTO Secretariat access to its economic and social database, as well as to the statistical annex of global economic prospects and developing countries.⁶⁹ In short, the WTO has access to the resources of both the IMF and the World Bank with regard to acceding countries' policies and institutional capacities. By actively utilizing the data, the working party could shorten the duration of the fact-finding stage, since they would not have to fight with the acceding country's efforts to conceal its domestic institutions and policy features.

2. The working party must prioritize commitments based on the institutional capacity of the acceding country.

Second, once the working party members have successfully diagnosed accurate information about an acceding country's domestic circumstances, they should focus on priorities based on institutional capacity. The working party members tend to ask for as many concessions as possible for their benefits. However, the acceding countries, especially LDCs, cannot achieve all the commitments at once, no matter how much technical assistance they receive. In short, many acceding countries have adopted policies that are too ambitious relative to their capacities.⁷⁰ Thus, the working party members must prioritize the reform commitments based on the institutional capacity of the acceding countries. In a certain sector, the acceding country may have sufficient institutions to manage a stronger commitment, meeting the WTO obligation, whereas in other sectors, the country may have difficulty restructuring because of insufficient institutions.

In this regard, the working party can first ask for detailed commitments in certain areas where the acceding country has sufficient institutions to manage the commitments. On the other hand, the working party may want to postpone obligations related to the GATS Agreement (General Agreement on Trade in Services), for instance, which requires acceding countries, especially LDCs, to implement many institutional and enforcement measures that they lack. As a result of this prioritizing of reforms, the acceding country would have enough time and resources to establish "right institutions."

To conclude, the WTO must take advantage of the information and data provided by the IMF and the World Bank. This would allow the WTO members accurately to grasp the features of the acceding country's policies and institutions. Further, this would prevent the acceding country from not fully disclosing its economic circumstances. Once the working party members have accurate information on the institutional capacity of the acceding country, they must prioritize commitments based on institutional capacity. This selective approach by the working party would ensure the acceding country has enough time and resources to establish right institutions.

4. Modification of Safeguard Measures

A. Introduction

A WTO member may take a “safeguard” action (i.e., restrict imports of a product temporarily) to protect a specific domestic industry from an increase in imports of any product which is causing or which is threatening to cause serious injury to the industry.⁷¹ This article argues that the extension of the use of safeguard measures can be an alternative solution to make the world trading system more development-friendly, and it would render the international trade system more compatible with the goal of local ownership of development programs. Here, this article explores how modification of safeguards could help developing countries to establish right institutions. First, the article investigates literature to do with safeguards.

B. Literature Review

Hoekman and Kostecki addressed the two roles of safeguard provisions with respect to the underlying agreement – as “insurance” and as a “safety valve.”⁷² The “safety valve” principle would come into play in a situation where a government wishes to escape from the agreement in the presence of economic or political pressure. The government wants an option that allows it to suspend its obligation without having to fear that the entire agreement will fall apart. The “insurance” rationale would come into play in a situation where a government wants to hedge against the possibility that unforeseen events may happen. Fischer and Prusa elaborated this thought by arguing that, in certain circumstances, resorting to a safeguard is better policy than imposing uniform tariffs.⁷³

Others have examined how the safeguard policies affect the “adjustment process.” For example, Miyagiwa and Ohno emphasized that safeguards for domestic industry allow an excellent opportunity for domestic industry to adjust to increased competition in order to increase its “competitiveness.”⁷⁴ On the other hand, Brainard and Verdier studied how the adjustment process diminishes future lobbying intensity.⁷⁵

They said import protection shortens the adjustment process, which leads to diminishing future lobbying intensity. Davidson and Matusz investigated the impact of safeguards on the labour market. They showed how safeguards can smooth out the adjustment process following an unexpected improvement in a country's terms of trade.⁷⁶

Researchers have discussed various aspects of safeguard measures; however, the “institution” aspect of safeguards has not been fully discussed yet. We still don't know how modification of safeguards, if possible, could help a nation build up its institutions during the trade adjustment process. In this regard, Rodrik introduced the concept of “developmental and social safeguards” in his book, *One Economics, Many Recipes*. He argued that these modified safeguards should be used in three circumstances to achieve smooth adjustment to trade reform and, thus, establishment of right institutions.⁷⁷

First, Rodrik insisted that the WTO must allow developmental and social safeguards for developing countries when they uphold their national standards and policies, or when trade demonstrably undermines domestic practices enjoying broader support.⁷⁸ For example, South Korea's historic economic growth during the 1960s and 1970s was achieved not by import liberalization but export subsidization. This type of reform is now prohibited under existing WTO rules on subsidies. Similarly, China's two-track reform strategy in agriculture and industry, which maintained nonmarket institutional form, has been successful. Thus, the WTO must recognize a country-specific development strategy and give permission to use a “safeguard” measure suited to the circumstances.

Second, Rodrik suggested that developmental and social safeguards must be applied when characteristics of import goods are in conflict with a widely shared social or developmental norm at home,⁷⁹ for example, goods manufactured using child labour, which violates domestic opinion about what is acceptable, or cases where consumers might want to prohibit imports of goods from a country because of safety concerns.

Lastly, Rodrik recommends that safeguards must be used when a developing country faces a serious economic distribution problem in society.⁸⁰ Rodrik did not elaborate this thought in his book; the next section of this article explores how a developing country can seek a safeguard to eliminate a distributional concern.

C. Developmental and Social Safeguards

Rodrik presumably argued that the WTO must allow safeguard measures if compliance with WTO obligations seriously impairs economic distribution within a

society, until right institutions are implemented in a sector that influences economic distribution.

First, Rodrik argued to restrict the use of developmental and social safeguards to the distribution aspect because, otherwise, many countries would abuse such a provision, applying it to any institution building in any economic sector. Moreover, the distribution issue has been a main target of criticism in the debate on globalization, and especially the debate on trade liberalization. Many studies have insisted that trade liberalization brings about income polarization and inequality within a nation or between nations.⁸¹ Therefore, Rodrik supposedly thought that trade reform must be paused until a government has implemented right institutions in the economic sector to avoid a severe distribution problem.

Second, although Rodrik did not specifically mention what economic sector affects distribution, this article argues that the labour market is a critical indicator for determining the state of distribution within a society since job creation, the unemployment rate, and minimum wage significantly affect income distribution and inequality within the economy.

In sum, according to Rodrik, implementing right institutions in the labour market through safeguards should be a prerequisite for trade reform if such reform seriously impairs economic distribution in the society.

1. Developmental and social safeguards should be used only when governments in developing countries adopt general Trade Adjustment Assistance (TAA) rather than targeted TAA.

So far, this article has concluded that developmental and social safeguards must be imposed until right institutions in the labour market are successfully implemented, to lessen distribution concerns. In fact, many governments actually adopt a Trade Adjustment Assistance (TAA) program, designed to help labourers who were injured or lost their jobs due to imports, to solve the distribution problem in the economy.⁸² The TAA offers a set of policies such as an unemployment benefits program or subsidies for workers certified as trade-displaced.⁸³

There are two types of TAA: a general TAA and a targeted TAA.⁸⁴ The general TAA's purpose is to implement programs for not only trade-displaced workers but also workers displaced for other reasons, such as consumer preference or technological change.⁸⁵ The general TAA includes an unemployment insurance program, macroeconomic policies conducive to strong growth and high employment, and education and lifelong learning programs to upgrade the skills of the workforce.⁸⁶ In contrast, the targeted TAA serves only trade-displaced workers or a subset of this

group by implementing specific adjustment assistance or subsidies to trade-displaced workers.⁸⁷ In fact, there are ongoing debates regarding when and what type of TAA must be imposed for eliminating a negative distribution issue.

This article argues that developmental and social safeguards should be permitted only when governments in developing countries adopt general Trade Adjustment Assistance (TAA) rather than targeted adjustment assistance. In other words, Rodrik's safeguards should be used only when fundamental problems of labour market structure are addressed, because exercising a general TAA is consistent with implementing right institutions. Unlike targeted TAA, in which the assistance goes only to the sector injured due to trade, general TAA requires essential renovation of trade-related institutions for efficient reallocation of labour.

Developing countries need a long period of time to implement right institutions in the labour market, since general TAA may even require education reform for the purpose of vocational rehabilitation. Moreover, developing countries face long delays in passing laws or reforms, since they usually have inefficient political and legislative systems. Based upon these disadvantages, WTO members should wait until developing countries have renovated the fundamentals of their labour markets to avoid any further distribution problems due to the absence of right institutions. In that way, developing countries would have strong infrastructures and institutions to endure further trading activities without seeking additional safeguards for displaced workers.

2. When exercising policy options under general TAA, a developing country must choose the policy that fits its local environment and should not merely follow the path of how developed countries have handled their labour markets.

So far, this article has concluded that the WTO must allow developing countries to seek extended safeguards for exercising policy options under general TAA to help establish right institutions. There are two guidelines for choosing policy options under general TAA.

First, governments in developing countries should not merely follow how developed countries have handled their labour markets. For example, a developing country might want to reduce "large severance payments" rather than reduce "search costs of employment" because institutions for reducing search costs for new jobs – such as newspapers, Internet, private consultation, etc. – are more readily available and more developed in industrialized countries than in developing countries.⁸⁸ Trade adjustment may involve starting up new firms, and employment protection policies

such as, for example, large severance payments, may discourage entrepreneurs from hiring workers needed for starting up a new company, since it would be costly to let them go if the business were to be less profitable than expected.⁸⁹ In this regard, reducing large severance payments can still be an efficient, instrumental choice in developing countries, because a developing country provides a more flexible environment for the creation of new companies that encourage a rapid allocation of labour, especially in the area of micro- and small-scale enterprises (MSEs).⁹⁰ In short, because developing countries have a better environment for creating new companies, the institutional choice of reducing large severance, a choice that encourages the creation of new companies, is highly effective in developing countries.

Second, among policy options under general TAA, the government must implement institutions that are suitable to domestic, local labour market conditions, since the main purpose is to build up the “right institutions.” For example, vocational rehabilitation through Internet network programs is a good example of a “right institution” in Korea. The policy is based on Korea’s culture of strong enthusiasm for education and a social institution index with a high level of “Internet network access rate.” Korea’s university and graduate school completion rate tops those of member states of the Organisation for Economic Co-operation and Development (OECD), according to the organization’s annual education index.⁹¹ Over 98 percent of Koreans aged 25 to 34 graduated from junior college, university, or graduate school in 2010.⁹² Moreover, Koreans’ rate of entrance to university or graduate school was 71 percent, greatly exceeding the OECD average of 56 percent.⁹³ In addition to the enthusiasm for education, “OECD Internet Economy Outlook 2012” provides information that Korea ranked number one for easy Internet access rate of any location.⁹⁴ Thus, expanding the Internet network vocational rehabilitation program is a good example of a “right institution,” since this reflects Korean enthusiasm for education and a strong rate of easy access to the Internet.

To summarize, this article insists that the extension of safeguard measures helps developing countries establish right institutions, which, in turn, make the world trading system more development-friendly and the international trade system more compatible with the goal of local ownership of development programs. To avoid the abusive use of the measure, a government is permitted to use the safeguard measure only when the government exercises a general TAA that addresses the fundamentals of the labour market to avoid negative consequences of distribution problems in the economy. In doing so, developing countries must implement institutions that reflect their local market conditions and culture instead of merely following the developed countries’ path.

5. Cooperation with the IMF

A. Introduction

There have been problems of jurisdictional conflict between the WTO and the IMF. China's accession to the WTO is a good example of the conflict.⁹⁵ In 1995, a draft protocol on China's accession required China to make its foreign exchange system consistent with the obligation of Article VIII of the IMF and limited China's restriction on the use of foreign exchanges in the future.⁹⁶ The IMF objected to the protocol, arguing that exchange control is solely under the jurisdiction of the IMF.⁹⁷ The IMF requested to drop all provisions related to the exchange measures from the draft protocol, which created severe tension between the WTO and the IMF.⁹⁸ The problem was not resolved for five years, and China finally acceded to the WTO in 2001.⁹⁹

Both the IMF and the WTO realized the absent solution to the jurisdictional conflict, and thus they agreed to cooperate with each other to achieve policy coherency. The Policy Development and Review Department (PDR) in the IMF issued two guidance notes in 1995. The first guidance note¹⁰⁰ included aspects of cooperation with the WTO such as balance of payments, consistency of policy advice, staff contacts, research cooperation, and exchange of data and information. The second guidance note¹⁰¹ addressed the consistency of IMF advice with the WTO rules, emphasizing the WTO rules that IMF staff must be aware of in the process of designing conditionality. Simply put, the guidance note tried to draw a clear line about how far IMF conditionality can go in the area of trade policy. The guidance note allowed the IMF to give advice on trade policy as long as the country would not violate the WTO obligations.¹⁰²

Explicit and formal agreement for IMF and WTO cooperation was established in a cooperation agreement in December 1996.¹⁰³ The key arrangements for IMF-WTO cooperation are specified in table 2.¹⁰⁴

However, there has been strong criticism about the performance of cooperation. The frequency of interaction between the IMF and the WTO has steadily declined. The number of IMF staff persons who report back from the Geneva office to the PDR's trade policy division in the IMF declined from five to two in 2002, and the number became zero in 2008.¹⁰⁵ The Committee on Liaison with the WTO in the IMF stopped meeting after 2004 and was not reestablished afterward.¹⁰⁶ Informal consultation has been reduced as well.¹⁰⁷ IMF staff had sometimes significantly contributed to WTO meetings either through oral statements or briefings, but this stopped after 2001.¹⁰⁸ Typically, the WTO initiated the request for IMF research or

consultation and IMF staff provided research, but this rarely became a basis for the final outcome of WTO decisions.¹⁰⁹ Some criticized the WTO by arguing that the agreed-upon cooperation never worked properly, and the IMF and the World Bank do more to induce developing countries to implement trade liberalization by imposing trade conditionality.¹¹⁰

Table 2 Key Arrangements in the IMF–WTO 1996 Cooperation Agreement

Area	Arrangement
Balance of payment consultations	<ul style="list-style-type: none"> The IMF will participate in consultations carried out by the WTO Committee on Balance of Payments Restrictions on measures taken by a WTO member to safeguard its balance of payments
Representation	<ul style="list-style-type: none"> The IMF will invite the WTO Secretariat to send an observer to Executive Board meetings on trade policy issues and matters of common interest. The WTO will invite the IMF to send an observer to meetings of its Ministerial Conference, General Council, and certain committees, working groups, and bodies.
Information and document exchange	<ul style="list-style-type: none"> The IMF and the WTO will make available to each other in advance the agendas and relevant documents for the meetings to which they are invited. In addition, the IMF will make available to the WTO Secretariat the agendas of the Executive Board meetings at the time of their circulation in the Fund, and the WTO will make available to the Fund the agendas of the Dispute Settlement Body at the time of their circulation in the WTO. The IMF must inform the WTO of any decisions approving restrictions on the making of payments or transfers for current international transactions, decisions approving discriminatory currency arrangements or multiple currency practices, and decisions requesting a Fund member to exercise controls to prevent a large or sustained outflow of capital. The IMF and WTO must share their reports with each other (staff reports and related background staff papers on Article IV consultations and on use of Fund resources from the IMF; trade policy review reports, summary records and reports to/of various WTO councils, bodies, and committees from the WTO), subject to a confidentiality constraint.
Informal consultation	<ul style="list-style-type: none"> IMF and WTO Secretariat staff must consult with each other on issues of possible inconsistency between measures under discussion with a common member and that member's obligations under the WTO Agreement or the IMF's Articles of Agreement.
Dispute settlement	<ul style="list-style-type: none"> The IMF will inform in writing the relevant WTO body (including dispute settlement panels), considering exchange measures within the Fund's jurisdiction, as to whether such measures are consistent with the Articles of Agreement of the Fund.

There seems to be no cooperation regarding the efforts to build right institutions for developing countries. This article introduces two modes of cooperation between the WTO and the IMF that would achieve this goal: (1) the IMF must utilize trade policy reviews (TPRs) when drafting conditionality, and (2) the IMF and the WTO must reinstitute research cooperation to select priorities for reform in developing countries.

B. Two Modes of Cooperation

1. The IMF must actively utilize trade policy reviews (TPRs) when drafting conditionality.

This section argues that the IMF and the WTO must reactivate the exchange of information and data in order to help establish right institutions in developing countries. To be specific, the WTO's abundant resources in trade-related data, such as TPRs, could become powerful resources for conditionality drafting in the IMF. TPRs provide a wider and more comprehensive analysis of trade and trade-related policies than Article IV consultation, which is the basis of drafting IMF conditionality.¹¹¹

First, TPRs provide the most up-to-date information on trade policy and trade-related institutional reforms in developing countries and the impact of those on existing domestic institutions. Trade reform leads many institutions to import from abroad, and it significantly affects the economic and social institutions in developing countries. Membership in the WTO, for example, requires the adoption of a certain set of institutional norms – nondiscrimination in trade and industrial policies, WTO-consistent copyright protection and regulatory reform, and so on. In this regard, a TPR provides detailed information on the institution-building process related to trade reform in developing countries. Furthermore, it explains how existing domestic laws interact with the new reforms. For example, the TPR for Korea in 2012¹¹² indicates most recent regulatory reforms responded to a financial crisis in 2009. In 2009, a temporary waiver, Temporary Regulatory Relief (TRR), was introduced prior to the implementation of burdensome regulations to help overcome the global economic crisis; the TRR suspended the implementation of some burdensome regulations for a certain period (one to two years).¹¹³ At the same time, Regulatory Reform for New Growth Engine Industries was launched to clear regulatory barriers to the development of future growth industries, such as new and renewable energy and green technology.¹¹⁴

Second, a TPR provides a detailed explanation of the impact of institutional reform on other areas of the economy, such as the labour market. For example, the TPR for Korea addresses most recent regulatory reforms and how the reforms enhance

the quality of institutions by increasing transparency and predictability.¹¹⁵ Moreover, it explains the government's underlying purpose of imposing regulatory reform as a solution to job creation in the labour market.¹¹⁶ For example, the TPR first explains that the Korean government's labour market policies are being focused on increasing investment in labour-intensive activities – notably, services – thereby raising labour productivity, strengthening the social safety net, and increasing participation of the elderly and females in the labour force.¹¹⁷ However, the rapid aging of Korea's population will lead to a shortage of labour. In fact, such a shortage could be somewhat relieved by inflows of temporary workers or immigration (mode 4 under the GATS), especially into service sectors, such as health care and nursing homes for the elderly. To respond, the TPR explains that, in October 2008, the government launched the Contact Korea program under the authority of the Korea Trade-Investment Promotion Agency (KOTRA), with the aim of attracting highly specialized foreign professionals to Korea.¹¹⁸

To conclude, the TPR addresses how trade policies and the labour market interact with each other, particularly how trade policy impacts job creation in the labour market in Korea. This TPR's consideration of the labour market is contrary to what the IMF had done to South Korea in the Asian financial crisis. There were many criticisms regarding the IMF's failure to consider the aspect of job creation while they imposed an exchange rate stabilization policy.¹¹⁹ During the crisis, the IMF imposed a high interest rate policy to stop a soaring exchange rate, but it ultimately became a significant burden for many small- and medium-sized firms because their debt ratio was at a high level. In turn, many firms went bankrupt, which led to a historically high unemployment rate. The high unemployment obviously led to a low level of consumption, which slowed down a recovery from the financial crisis. The IMF failed to give careful consideration to the impact of policy on job creation in the labour market.

Thus, this article maintains that the IMF must actively utilize TPRs in the process of drafting conditionality. This can become a prominent tool to solve the problem of ownership of reforms and to implement right institutions. TPRs provide the most up-to-date information related to trade policy and other sectors of the economy. TPRs give insight into how trade reform interacts with domestic law. Furthermore, TPRs explain the impact of trade reform on other aspects of the economy, such as the labour market, which the IMF has failed to consider in the past.

Despite the strong merits of TPRs, IMF staff have not been fully utilizing them in the process of drafting conditionality. In a survey of IMF staff (grades A15–B4), one quarter of the respondents reported never having read a TPR, and only 15 percent said

they had read a TPR.¹²⁰ Moreover, less than three-fifths of these TPRs were cited in IMF reports.¹²¹ This result shows that TPRs do not significantly affect shaping the conditionality of the structural adjustment programs of the IMF. Cooperation must be reactivated in terms of data exchange so that TPRs become a significant source for establishing right institutions for many developing countries.

2. Reinitiate research cooperation for selecting priorities for reform since the “right timing” of policy is critical for establishing right institutions

The WTO and the IMF must reinitiate research cooperation to select policy priorities in developing countries, because “right timing” of policy is crucial to implementing right institutions. The IMF has tended to disregard selecting priorities among liberalization and reform conditionality. The right timing for implementing conditionality leads to successful implementation of right institutions in developing countries. The IMF does seem to be conducting research on priority of policy.¹²² For example, the IMF produced a paper arguing that trade restriction is not a first-best policy for achieving a targeted growth rate during a financial crisis.¹²³

However, the IMF has failed to apply their policy priority study to conditionality. For example, for South Korea during the Asian financial crisis, the IMF failed to impose trade reform policy at the later stage of the financial recovery. In 1998, the IMF imposed trade liberalization by eliminating trade-related subsidies, restrictive import licensing, and the import diversification program. The Korean government agreed to set a timetable in line with WTO commitments to eliminate those three hurdles. However, this structural reform became a substantial burden to many trade corporations that were severely hit by high interest rates. Many trade corporations did not have enough capacity to handle both trade reform and a high level of debt. The IMF should have concentrated on helping the economy with a temporary foreign exchange shortage for financial stabilization, and then structural reform should have been imposed after that. Simply put, the IMF failed to examine policy priorities related to conditionality. To respond to this criticism, a TPR can help the IMF analyze local market conditions of developing countries and decide which policy or reform should be initiated first.

First, TPRs can help the IMF decide the timing for trade reforms to take effect given certain maturity levels of customs administration and ongoing macroeconomic policies. Many findings suggest that the impact of trade reform on fiscal revenue depends on the modernization of customs administration and sound macroeconomic policy.¹²⁴ Thus, if the IMF knows the maturity level of customs administration and

ongoing macroeconomic policies of a nation, the IMF would be able to point out the “right timing” to exercise trade reforms. In this regard, TPRs provide a great solution because they address both the maturity of customs administration and ongoing macroeconomic policy in detail. For example, the 2012 TPR reported by South Korea starts with the World Bank report regarding a ranking of trade facilitation efforts across different countries.¹²⁵ The TPR provides information on recent Korea Customs Service (KCS) efforts to achieve modernization of customs administration. According to the TPR, KCS recently established “The World’s Best Customs 2012+ Plan,” consisting of five strategies and eighty specific mid- and long-term reform initiatives.¹²⁶ Its main implementation directives are cooperating with the private sector for governance-based customs administration, emphasizing both self-regulation and participation of every company, expanding the role of customs to secure public health and welfare, and realigning customs procedures, practices, rules, and regulations with international standards (including the revised Kyoto Convention).¹²⁷ Moreover, the TPR further elaborates on customs procedures and valuation in extreme detail.

To conclude, based on the experience from the Asian financial crisis, the IMF failed to establish right institutions in developing countries because they failed to recognize the “impact of their conditionality on other economic sectors,” such as job creation in the labour market and they failed to recognize priorities among policies. To respond to this criticism, the WTO could help the IMF by providing TPRs. As the IMF admits, documents such as TPRs provide more comprehensive data on trade reform and trade-related policy than those such as Article IV consultation reports. For example, a TPR accounts for recent data on modernization of customs administration, which affects the decision to pursue trade reform at a certain stage.

6. Conclusion

The primary purpose of this article is to seek how the WTO can achieve this goal: shifting from a market access mind-set to a development-friendly mind-set. The article introduces three methods for the WTO to help developing countries establish right institutions: (1) modification of the accession process, (2) modification of safeguards, and (3) cooperation with the IMF. The article argues that these three methods would enable developing countries to experiment with institutional arrangements and leave room for them to devise their own right institutions. These three methods are the ways in which the WTO can promote its free trade goals by being sensitive to the development needs of its members.

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